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FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 13-268; DA 14-63]

Closed Auction of AM Broadcast Construction Permits Scheduled for May 6, 2014; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 84

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document summarizes the procedures and minimum opening bids for the upcoming auction of AM Broadcast construction permits (Auction 84). The Public Notice summarized here is intended to familiarize applicants with the procedures and other requirements for participation in the auction.

DATES: Beginning on February 19, 2014, and until 6:00 p.m. Eastern Time (ET) on March 4, 2014, Auction 84 applicants may review, verify or update their previously-filed short-form applications electronically. Bidding in Auction 84 will start on May 6, 2014.

FOR FURTHER INFORMATION CONTACT: Wireless Telecommunications Bureau, Auctions and Spectrum Access Division: For legal and general auction questions: Lynne Milne or Kathryn Hinton at (202) 418-0660; For auction process and procedures: Jeff Crooks or Linda Sanderson at (202) 418-0660. Media Bureau, Audio Division: For licensing information, service rule and other questions: Lisa Scanlan or Tom Nessinger at (202) 418-2700. To request materials in accessible formats (Braille, large print, electronic files, or audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

SUPPLEMENTARY INFORMATION: This is a summary of the Auction 84 Procedures Public Notice released on January 27, 2014. The complete text of the Auction 84 Procedures Public Notice, including an attachment and related Commission documents, is available for public inspection and

copying from the FCC Reference Information Center, 445 12th Street S.W., Room CY-A257, Washington, DC 20554 during its regular business hours. The Auction 84 Procedures Public Notice and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street S.W., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, fax 202-488-5563, or website: <http://www.BCPIWEB.com>. The Auction 84 Procedures Public Notice and related documents also are available on the Internet at the Commission's website: <http://wireless.fcc.gov/auctions/84/>, or by using the search function for AU Docket No. 13-268 on the Commission's Electronic Comment Filing System (ECFS) web page at <http://www.fcc.gov/cgb/ecfs/>.

I. GENERAL INFORMATION

A. Background

1. On November 18, 2013, the Wireless Telecommunications and Media Bureaus (the Bureaus) released a public notice seeking comment on competitive bidding procedures to be used in Auction 84. Four parties submitted filings in response to the Auction 84 Comment Public Notice, 78 FR 72081, December 2, 2013.

2. On January 27, 2014, the Bureaus released a public notice that established the procedures and minimum opening bid amounts for the upcoming Auction 84 that will resolve pending groups of mutually exclusive applications (MX groups) for AM construction permits identified in Attachment A of the Auction 84 Procedures Public Notice. Auction 84 is a closed auction with participation limited to those parties that are designated as an applicant for this auction on Attachment A of the Auction 84 Procedures Public Notice.

B. Construction Permits in Auction 84

3. Auction 84 will offer construction permits for 22 new commercial AM stations. A list of the locations and frequencies of these stations is included in Attachment A of the Auction 84 Procedures Public Notice.

4. Each qualified bidder will be eligible to bid on only those construction permits specified for that qualified bidder in Attachment A to the Auction 84 Procedures Public Notice. All applicants within each MX group are directly mutually exclusive with one another; therefore, no more than one construction permit will be awarded for each MX group identified in Attachment A.

5. Two applicants sought removal of certain MX groups from this auction, and one of those requests was opposed by a third applicant. For the reasons discussed in the Auction 84 Procedures Public Notice, the Bureaus declined the requests to remove those MX groups from this auction.

C. Rules and Disclaimers

i. Relevant Authority

6. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules, including Commission decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees. Broadcasters should also familiarize themselves with the Commission's AM broadcast service and competitive bidding requirements as well as Commission orders concerning competitive bidding of broadcast construction permits. Applicants must also be thoroughly familiar with the procedures, terms and conditions contained in the Auction 84 Procedures Public Notice and any future public notices that may be released in this proceeding.

7. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to Auction 84.

ii. Prohibited Communications and Compliance with Antitrust Laws

8. To ensure the competitiveness of the auction process 47 CFR 1.2105(c) prohibits auction applicants for construction permits in any of the same geographic license areas from communicating with

each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications as parties with whom they have entered into agreements pursuant to 47 CFR 1.2105(a)(2)(viii).

a. Entities Subject to Section 1.2105

9. The prohibition on certain communications in 47 CFR 1.2105(c) applies to any applicants that submit short-form applications seeking to participate in a Commission auction for construction permits in the same geographic license area. Thus, unless they have identified each other on their short-form applications as parties with whom they have entered into agreements under 47 CFR 1.2105(a)(2)(viii), applicants for any of the same geographic license areas must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy. In some instances, this prohibition extends to communications regarding the post-auction market structure. **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.** In broadcast services, the “geographic license area” is the market designation of the particular service. In Auction 84, this prohibition applies to all applicants that have applied for construction permits for either the same geographic license area or the same MX group.

10. For purposes of this prohibition, 47 CFR 1.2105(c)(7)(i) defines “applicant” as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.

b. Prohibition Applies Until Down Payment Deadline

11. 47 CFR 1.2105(c)’s prohibition on certain communications became effective at the initial short-form application filing deadline pursuant to which an Auction 84 short-form application was filed (either January 30, 2004 or October 5, 2007) and ends at the down payment deadline after the auction closes, which will be announced in a future public notice.

c. Prohibited Communications

12. Applicants must not communicate directly or indirectly about bids or bidding strategy to other applicants in this auction. 47 CFR 1.2105(c) prohibits not only communication about an applicant's own bids or bidding strategy, it also prohibits communication of another applicant's bids or bidding strategy. 47 CFR 1.2105(c) does not prohibit non-auction-related business negotiations among auction applicants, each applicant must remain vigilant so as not to directly or indirectly communicate information that affects, or could affect, bids, bidding strategy, or the negotiation of settlement agreements.

13. Applicants are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations, including capital calls, requests for additional funds or use of the Commission's bidding system. Applicants should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become conduits for the communication of prohibited bidding information. Similarly, an applicant's public statement of intent not to participate in Auction 84 bidding could also violate the rule. Applicants are hereby placed on notice that public disclosure of information relating to bids, or bidding strategies, or to post-auction market structures may violate 47 CFR 1.2105(c).

d. Disclosure of Bidding Agreements and Arrangements

14. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form applications. Applicants must identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the construction permits being auctioned, including any agreements relating to post-auction market structure.

15. If parties had agreed in principle on all material terms prior to the short-form application filing deadline, each party to the agreement must identify the other party or parties to the agreement on its

short-form application under 47 CFR 1.2105(c), even if the agreement has not been reduced to writing. If the parties did not reach any such agreement by the short-form filing deadline, they may not negotiate, discuss or communicate with any other applicant any information covered by the rule until after the down payment deadline.

e. 47 CFR 1.2105(c) Certification

16. By electronically submitting a short-form application, each applicant in Auction 84 certified its compliance with 47 CFR 1.2105(c) and 73.5002(d). In particular, each applicant has certified under penalty of perjury that it has not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the amount of the applicant's bids, bidding strategies, or the particular construction permits on which it will or will not bid. However, the Bureaus caution that merely having filed a certifying statement as part of an application will not outweigh specific evidence that a prohibited communication has occurred, nor will it preclude the initiation of an investigation when warranted. Any applicant found to have violated 47 CFR 1.2105(c) may be subject to sanctions.

f. Duty to Report Prohibited Communications

17. An applicant is required by 47 CFR 1.65 to report to the Commission any communication the applicant has made to or received from another applicant after the short-form application filing deadline that affects or has the potential to affect bids or bidding strategy, unless such communication is made to or received from a party to an agreement identified under 47 CFR 1.2105(a)(2)(viii). 47 CFR 1.65(a) and 1.2105(c) require each applicant in competitive bidding proceedings to furnish additional or corrected information within five days of a significant occurrence, or to amend its short-form application no more than five days after the applicant becomes aware of the need for amendment. 47 CFR 1.2105(c)(6) provides that any applicant that makes or receives a communication that appears to violate 47 CFR 1.2105(c) must report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. The Commission has clarified that

each applicant's obligation to report any such communication continues beyond the five-day period after the communication is made, even if the report is not made within the five-day period.

g. Procedure for Reporting Prohibited Communications

18. A party reporting any communication pursuant to 47 CFR 1.65, 1.2105(a)(2) or 1.2105(c)(6) must take care to ensure that any report of a prohibited communication does not itself give rise to a violation of 47 CFR 1.2105(c). 47 CFR 1.2105(c) requires parties to file only a single report concerning a prohibited communication and to file that report with Commission personnel expressly charged with administering the Commission's auctions. This rule is designed to minimize the risk of inadvertent dissemination of information in such reports. This process differs from filing procedures used in connection with other Commission rules and processes which may call for submission of filings to the Commission's Office of the Secretary or ECFS. Filing through the Office of Secretary or ECFS could allow the report to become publicly available and might result in the communication of prohibited information to other auction applicants in violation of 47 CFR 1.2105(c).

19. Any reports required by 47 CFR 1.2105(c) must be filed consistent with the instructions set forth in the Auction 84 Procedures Public Notice. For Auction 84, such reports must be filed with the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, by the most expeditious means available. Any such report should be submitted by e-mail to Margaret W. Wiener at the following e-mail address: auction84@fcc.gov. If a report is submitted in hard copy, any such report must be delivered only to: Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street SW, Room 6423, Washington, D.C. 20554.

20. A party seeking to report such a prohibited communication should consider submitting its report with a request that the report or portions of the submission be withheld from public inspection by following the procedures specified in 47 CFR 0.459. Such parties also are encouraged to coordinate with the Auctions and Spectrum Access Division staff about the procedures for submitting such reports.

h. Winning Bidders Must Disclose Terms of Agreements

21. Each applicant that is a winning bidder will be required to disclose in its long-form application the specific terms, conditions, and parties involved in any agreement it has entered into. This applies to any bidding consortia, joint venture, partnership, or agreement, understanding, or other arrangement entered into relating to the competitive bidding process, including any agreement relating to the post-auction market structure.

i. Additional Information Concerning Rule Prohibiting Certain Communications

22. A summary listing of documents issued by the Commission and the Bureaus addressing the application of 47 CFR 1.2105(c) may be found in Attachment E of the Auctions 84 Procedures Public Notice.

j. Antitrust Laws

23. Regardless of compliance with the Commission's rules, applicants remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace. Compliance with the disclosure requirements of 47 CFR 1.2105(c) will not insulate a party from enforcement of the antitrust laws. To the extent the Commission becomes aware of specific allegations that suggest that violations of the federal antitrust laws may have occurred, the Commission may refer such allegations to the United States Department of Justice for investigation. If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.

iii. Due Diligence

24. Each applicant is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the construction permits for AM broadcast facilities that it is seeking in this auction. **Each bidder is responsible for assuring that, if it wins a**

construction permit, it will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in a broadcast service, subject to certain conditions and regulations. **An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.**

25. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. In particular, the Bureaus strongly encouraged each potential bidder to perform technical analyses and/or refresh its previous analyses to assure itself that, should it become a winning bidder for any Auction 84 construction permit, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. Each applicant was strongly encouraged to inspect any prospective transmitter sites located in, or near, the service area for which it plans to bid, confirm the availability of such sites, and to familiarize itself with the Commission's rules regarding the National Environmental Policy Act, 47 CFR 1.1301-1.1319.

26. Each applicant should conduct its own research prior to Auction 84 in order to determine the existence of pending administrative or judicial proceedings that might affect its decision to participate in the auction. Each participant in Auction 84 should continue such research throughout the auction. The due diligence considerations mentioned in the [Auction 84 Procedures Public Notice](#) do not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon specific facts and circumstances related to its interests.

27. The Bureaus also reminded each applicant that pending and future judicial proceedings, as well as certain pending and future proceedings before the Commission, including applications, applications for modification, petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal objections, and applications for review,

may relate to particular applicants, incumbent permittees, incumbent licensees, or the construction permits available in Auction 84. Each prospective applicant is responsible for assessing the likelihood of the various possible outcomes and for considering the potential impact on construction permits available in this auction.

28. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of the construction permits available in Auction 84. Each potential bidder is responsible for undertaking research to ensure that any permits won in this auction will be suitable for its business plans and needs. Each potential bidder must undertake its own assessment of the relevance and importance of information gathered as part of its due diligence efforts.

29. Applicants may research the licensing database for the Media Bureau in order to determine which channels are already licensed to incumbent licensees or previously authorized to construction permittees. Licensing records are contained in the Commission's Consolidated Data Base System (CDBS).

30. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, it must obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

iv. Use of Integrated Spectrum Auction System

31. Bidders will be able to participate in Auction 84 over the Internet using the Commission's web-based Integrated Spectrum Auction System (ISAS or FCC Auction System). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the

Commission, or any of its officers, employees, or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning, or use of the FCC Auction System that is accessible to qualified bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming, or other advice or service provided in connection with the FCC Auction System.

v. Environmental Review Requirements

32. Permittees or licensees must comply with the Commission's rules regarding implementation of the National Environmental Policy Act and other federal environmental statutes, 47 CFR 1.1301-1.1319. The construction of a broadcast facility is a federal action, and the permittee or licensee must comply with the Commission's environmental rules for each such facility. These environmental rules require, among other things, that the permittee or licensee consult with expert agencies having environmental responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the U.S. Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facility construction on historic properties, the permittee or licensee must follow the provisions of the FCC's Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process. The permittee or licensee must prepare environmental assessments for any facility that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species, or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. In addition, the permittee or licensee must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

II. SHORT-FORM APPLICATION REQUIREMENTS

A. Updating Applicant's FCC Form 175 in ISAS – Remedial Filing Window Closes March 4, 2014

33. All applicants listed in Attachment A of the Auction 84 Procedures Public Notice previously filed an electronic Application to Participate in an FCC Auction (FCC Form 175) and sections of FCC Form 301, Application for Construction Permit for Commercial Broadcast Station, including a separate Form 301 “tech box” for each proposed AM station, in either the filing window announced in the AM Auction 84 Window Notice or the Supplemental Rockland County Window Notice.

34. Each applicant should review carefully all of the information provided in the Auction 84 Procedures Public Notice, including the section regarding declarations as to former defaults and delinquencies. Attachment B of the Auction 84 Procedures Public Notice contains detailed instructions for Auction 84 applicants to review, verify and, if necessary, update their previously-filed short-form applications electronically using the FCC’s web-based Auction System during the upcoming remedial filing window.

35. Each applicant seeking to participate in this auction also should review its previously-filed electronic Form 175, verify the completeness and accuracy of all information in its application, and ensure that it complies with the Commission’s competitive bidding rules, as well as the procedures and deadlines set forth in the Auction 84 Procedures Public Notice. Consistent with the requirements of 47 CFR 1.65, if information contained in the application has changed or is no longer accurate, information required by the Commission’s competitive bidding rules has been omitted or was incomplete, or the applicant believes that information or its compliance with auction requirements needs further description or explanation, an applicant may need to update, revise or supplement information it previously submitted.

36. If an applicant updates information in its short-form, it will need to fully complete the electronic form and certify the application in order to bring its short-form application into compliance

with the current version of the FCC Form 175. For any change to be submitted and considered by the Commission, the applicant must complete the electronic Form 175 and submit its revised application by clicking on the SUBMIT button. **Any such updates to short-form applications for Auction 84 must be resubmitted and confirmed prior to 6:00 p.m. ET on Thursday, March 4, 2014.** Additional information about accessing, completing, and viewing the FCC Form 175 is included in Attachment B of the Auction 84 Procedures Public Notice.

37. To the extent that an applicant may need to make changes to information previously submitted in an attachment, it may do so by uploading a new attachment describing any such changes. Applicants may view their previously-filed attachments, but may not delete any previously-filed attachment during the remedial filing window.

38. Each applicant must disclose its current ownership information as required by 47 CFR 1.2105, 1.2110, 1.2112 and 73.5002. Those rules generally require disclosure of the following ownership information: all real parties in interest in the applicant, including the identity and relationship of those persons or entities directly or indirectly owning or controlling the applicant; name, address, and citizenship of any party directly or indirectly holding a 10 percent or greater interest in the applicant, as well as the percentage of interest held in the applicant and whether the interest is an indirect or direct interest; if there is an indirect interest in the auction applicant of 10 percent or greater, the attachment must describe the relationship between the indirect interest holder and the auction applicant; whether the party directly or indirectly holding a 10 percent or greater interest in the applicant has voting or non-voting, common or preferred, stock and the specific amount of interest held; and any FCC-regulated entity or applicant for an FCC license, in which the auction applicant or any real party in interest in the auction applicant owns a 10 percent or greater interest. Such disclosure must include a description of the FCC-regulated entity's principal business and its relationship to the auction applicant.

39. Auction 84 applicants were required to disclose information on ownership of the applicant in an attachment to the Form 175. To the extent an applicant needs to make any changes to information contained in its previously-filed ownership attachment(s), it may do so by uploading a new attachment.

40. In certifying its application, each applicant certifies under penalty of perjury that it is legally, technically, financially and otherwise qualified to hold a Commission license. Submission of a Form 175 (and any amendments thereto) constitutes a representation by the certifying person that he or she is an authorized representative of the applicant, that he or she has authority to bind the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications and any attachments are true, complete and correct. Submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

B. Minor Modifications to Short-Form Applications

41. An Auction 84 applicant is permitted to make only minor changes to its application. Under 47 CFR 1.2105(b), permissible minor changes include, among other things, deletion and addition of authorized bidders (to a maximum of three) and revision of addresses and telephone numbers of the applicants and their contact persons. If revised or updated information constitutes a "major amendment" as defined by 47 CFR 1.2105, such changes may result in disqualification of the applicant. After the initial application filing deadline, major amendments include a change of technical proposals, change of control of the applicant, or a claim of eligibility for a higher percentage of bidding credit.

C. Maintaining Current Information in Short-Form Applications

42. Each applicant is solely responsible for providing complete and accurate information in its Form 175. 47 CFR 1.65 and 1.2105(b) require an applicant in competitive bidding proceedings to furnish additional or corrected information to the Commission within five days of a significant occurrence, or to amend a short form application no more than five days after the applicant becomes aware of the need for the amendment. Changes that cause a loss of or reduction in the percentage of bidding credit specified on

the originally-submitted application must be reported immediately, and no later than five business days after the change occurs. For example, if ownership changes result in the attribution of new media of mass communications that affect the applicant's qualifications for a new entrant bidding credit, such information must be clearly stated in the bidder's amendment. Events occurring after the initial application filing deadline, such as the acquisition of attributable interests in media of mass communications, may also cause diminishment or loss of the bidding credit, and must be reported immediately, and no later than five business days after the change occurs.

43. An applicant cannot use the FCC Auction System outside of the remedial and resubmission filing windows to make changes to its short-form application for other than administrative changes (e.g., changing contact information or the name of an authorized bidder).

44. If changes need to be made outside of these windows, the applicant must submit a letter briefly summarizing the changes and subsequently update its short-form application in the FCC Auction System once it is available. Any letter describing changes to an applicant's short-form application must be submitted by e-mail to auction84@fcc.gov. The e-mail summarizing the changes must include a subject or caption referring to Auction 84 and the name of the applicant, for example, "Re: Changes to Auction 84 Short-Form Application of ABC Corp."

D. Provisions Regarding Former and Current Defaulters

45. Current defaulters or delinquents are not eligible to participate in Auction 84, but former defaulters or delinquents can participate so long as they are otherwise qualified and make upfront payments that are fifty percent more than would otherwise be necessary. An applicant is considered a "current defaulter" or a "current delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of its controlling interests (as defined by 47 CFR 1.2110), is in default on any payment for any Commission construction permit or license (including a down payment) or is delinquent on any non-tax debt owed to any Federal agency. An applicant is considered a "former defaulter" or a "former delinquent" when it, any of its affiliates, any of its controlling interests, or any of the affiliates of

its controlling interests (as defined by 47 CFR 1.2110), has defaulted on any Commission construction permit or license or been delinquent on any non-tax debt owed to any Federal agency, but has since remedied all such defaults and cured all of the outstanding non-tax delinquencies.

46. On the short-form application, an applicant must certify under penalty of perjury that it, its affiliates, its controlling interests, or the affiliates of its controlling interests, as defined by 47 CFR 1.2110, is not in default on any payment for a Commission construction permit or license (including down payments) and is not delinquent on any non-tax debt owed to any Federal agency. Each applicant must also state under penalty of perjury whether it, its affiliates, its controlling interests, or the affiliates of its controlling interests, has ever been in default on any Commission construction permit or license or has ever been delinquent on any non-tax debt owed to any Federal agency. Such applicants should confirm that this information remains accurate, and revise its response if the initial response no longer is accurate.

47. Applicants are encouraged to review guidance provided by the Wireless Telecommunications Bureau on default and delinquency disclosure requirements in the context of the short-form application process as described in the Auction 84 Procedures Public Notice. Parties are also encouraged to consult with the Wireless Telecommunications Bureau's Auctions and Spectrum Access Division staff if they have any questions about default and delinquency disclosure requirements.

48. The Commission considers outstanding debts owed to the United States Government, in any amount, to be a serious matter. The Commission adopted rules, including a provision referred to as the "red light rule," that implement its obligations under the Debt Collection Improvement Act of 1996, which governs the collection of debts owed to the United States. Under the red light rule, applications and other requests for benefits filed by parties that have outstanding debts owed to the Commission will not be processed. In the same rulemaking order, the Commission explicitly declared, however, that its competitive bidding rules "are not affected" by the red light rule. As a consequence, the Commission's adoption of the red light rule does not alter the applicability of any of its competitive bidding rules,

including the provisions and certifications of 47 CFR 1.2105 and 1.2106, with regard to current and former defaults or delinquencies.

49. Applicants were reminded, however, that the Commission's Red Light Display System, which provides information regarding debts currently owed to the Commission, may not be determinative of an auction applicant's ability to comply with the default and delinquency disclosure requirements of 47 CFR 1.2105. Thus, while the red light rule ultimately may prevent the processing of long-form applications by auction winners, an auction applicant's lack of current "red light" status is not necessarily determinative of its eligibility to participate in an auction or of its upfront payment obligation.

50. Moreover, applicants in Auction 84 should note that any long-form applications filed after the close of bidding will be reviewed for compliance with the Commission's red light rule, and such review may result in the dismissal of a winning bidder's long-form application. Applicants that have their long-form application dismissed will be deemed to have defaulted and will be subject to default payments under 47 CFR 1.2104(g) and 1.2109(c).

III. PRE-AUCTION PROCEDURES

A. Online Auction Tutorial – Available February 19, 2014

51. An online tutorial will be available on the Auction 84 web page by Wednesday, February 19, 2014. This online tutorial will provide information about pre-auction procedures, updating previously-filed short-form applications, auction conduct, the FCC Auction Bidding System, auction rules, and broadcast services rules. The tutorial will also provide an avenue to ask FCC staff questions about the auction, auction procedures, filing requirements, and other matters related to this auction. Additional information about this tutorial is provided in the [Auction 84 Procedures Public Notice](#).

B. Upfront Payments – Due April 7, 2014

52. Attachment A of the [Auction 84 Procedures Public Notice](#) specifies an upfront payment amount for each construction permit being offered in this auction. To be eligible to bid, an Auction 84 applicant must submit a timely and sufficient upfront payment by wire transfer, accompanied by an FCC

Remittance Advice Form (FCC Form 159), for at least one of the permits for which it is designated as an applicant on Attachment A to the Auction 84 Procedures Public Notice, and following the procedures and instructions set forth in Attachment C to the Auction 84 Procedures Public Notice. In order to meet the upfront payment deadline, an applicant's payment must be credited to the Commission's account for Auction 84 before 6:00 p.m. ET on April 7, 2014. The completed FCC Form 159 must be sent by fax to U.S. Bank in St. Louis, Missouri. All upfront payments must be made as instructed in the Auction 84 Procedures Public Notice and must be received in the proper account at U.S. Bank before 6:00 p.m. ET on April 7, 2014. Failure to deliver a sufficient upfront payment as instructed in the Auction 84 Procedures Public Notice by the deadline on April 7, 2014, will result in disqualification from participation in the auction.

i. Upfront Payments and Bidding Eligibility

53. The specific upfront payment amounts and bidding units for each construction permit are specified in Attachment A of the Auction 84 Procedures Public Notice. Applicants must make upfront payments sufficient to obtain bidding eligibility on the construction permits on which they will bid. The amount of the upfront payment submitted determines a bidder's initial bidding eligibility, the maximum number of bidding units on which a bidder may place bids in any single round. In order to bid on a particular construction permit, otherwise qualified bidders that are designated in Attachment A for that construction permit must have a current eligibility level that meets or exceeds the number of bidding units assigned to that construction permit. **At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A, or else the applicant will not be eligible to participate in the auction.** An applicant does not have to make an upfront payment to cover all construction permits designated for that applicant in Attachment A, but only enough to cover the maximum number of bidding units that are associated with construction permits on which they wish to place bids and hold provisionally winning bids in any given round. (Provisionally winning bids are bids that would become final winning bids if the

auction were to close after the given round.) The total upfront payment does not affect the total dollar amount the bidder may bid on any given construction permit.

54. In calculating its upfront payment amount, an applicant should determine the **maximum** number of bidding units on which it may wish to be active (bid on or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that number of bidding units. A qualified bidder's maximum eligibility will not exceed the sum of the bidding units associated with the total number of construction permits identified for that applicant in Attachment A of the Auction 84 Procedures Public Notice. In some cases, a qualified bidder's maximum eligibility may be less than the amount of its upfront payment because the qualified bidder has either previously been in default on a Commission construction permit or license or delinquent on non-tax debt owed to a Federal agency, or has submitted an upfront payment that exceeds the total amount of bidding units associated with the construction permits designated for that bidder. In order to make this calculation, an applicant should add together the bidding units for all construction permits on which it seeks to be active in any given round. **Applicants should check their calculations carefully, as there is no provision for increasing a bidder's eligibility after the upfront payment deadline.**

55. Applicants that are former defaulters must pay upfront payments 50 percent greater than non-former defaulters. If an applicant is a former defaulter, it must calculate its upfront payment for all of its identified construction permits by multiplying the number of bidding units on which it wishes to be active by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit. If a former defaulter fails to submit a sufficient upfront payment to establish eligibility to bid on at least one of the construction permits designated for that applicant in Attachment A of the Auction 84 Procedures Public Notice, the applicant will not be eligible to bid

C. Auction Registration

56. Approximately ten days before the auction, the Bureaus will issue a public notice announcing all qualified bidders for the auction. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by overnight mail. The mailing will be sent only to the contact person at the contact address listed in the FCC Form 175 and will include the SecurID® tokens that will be required to place bids, the “Integrated Spectrum Auction System (ISAS) Bidder’s Guide,” and the Auction Bidder Line phone number.

57. Qualified bidders that do not receive this registration mailing will not be able to submit bids. Therefore, if this mailing is not received by noon on Wednesday, April 30, 2014, applicants should call the Auctions Hotline at (717) 338-2868. Receipt of this registration mailing is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material. In the event that SecurID® tokens are lost or damaged, only a person who has been designated as an authorized bidder, the contact person, or the certifying official on the applicant’s short-form application may request replacements.

D. Remote Electronic Bidding

58. Only qualified bidders are permitted to bid. Qualified bidders are permitted to bid electronically via the Internet or by using the telephonic bidding option. All telephone calls are recorded. In either case, each authorized bidder must have its own SecurID® token, which the Commission will provide at no charge. Each applicant with one authorized bidder will be issued two SecurID® tokens, while applicants with two or three authorized bidders will be issued three tokens.

E. Mock Auction – May 2, 2014

59. All qualified bidders will be eligible to participate in a mock auction on Friday, May 2, 2014. The mock auction will enable bidders to become familiar with the FCC Auction System prior to the auction. The Bureaus strongly recommended that all bidders participate in the mock auction.

IV. AUCTION

60. The first round of bidding for Auction 84 is scheduled to begin on Tuesday, May 6, 2014. The initial bidding schedule will be announced in a public notice listing the qualified bidders.

A. Auction Structure

i. Simultaneous Multiple Round Auction

61. All construction permits in Auction 84 will be auctioned in a single auction using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits for which that bidder is designated an applicant in Attachment A of the Auction 84 Procedures Public Notice. Unless otherwise announced, bids will be accepted on all construction permits in each round of the auction until bidding stops on every construction permit.

ii. Eligibility and Activity Rules

62. The amount of the upfront payment submitted by a bidder determines initial bidding eligibility, the maximum number of bidding units on which a bidder may be active. Each construction permit is assigned a specific number of bidding units as listed in Attachment A of the Auction 84 Procedures Public Notice. Bidding units assigned to each construction permit do not change as prices rise during the auction. Upfront payments are not attributed to specific construction permits. Rather, a bidder may place bids on any of the construction permits for which it is designated an applicant in Attachment A as long as the total number of bidding units associated with those construction permits does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on or hold provisionally winning bids on in any single round, and submit an upfront payment amount covering that total number of bidding units. At a minimum, an applicant's upfront payment must cover the bidding units for at least one of the construction permits for

which it is designated an applicant in Attachment A. The total upfront payment does not affect the total dollar amount a bidder may bid on any given construction permit.

63. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction.

64. A bidder's activity level in a round is the sum of the bidding units associated with construction permits covered by the bidder's new and provisionally winning bids. A bidder is considered active on a construction permit in the current round if it is either the provisionally winning bidder at the end of the previous bidding round or if it submits a bid in the current round.

65. A bidder is required to be active on 100 percent of its current eligibility during each round of Auction 84. That is, a bidder must either place a bid or be a provisionally winning bidder during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

iii. Activity Rule Waivers

66. The Bureaus decided to provide bidders with three activity rule waivers. Bidders may use an activity rule waiver in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's eligibility despite its activity in the current round being below the required minimum activity level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

67. The FCC Auction System assumes that a bidder with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will

automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining or (2) the bidder overrides the automatic application of a waiver by reducing eligibility. If no waivers remain and the activity requirement is not satisfied, the FCC Auction System will permanently reduce the bidder's eligibility, possibly curtailing or eliminating the ability to place additional bids in the auction.

68. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the "reduce eligibility" function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

69. Finally, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a proactive waiver is applied (using the "apply waiver" function in the FCC Auction System) during a bidding round in which no bids are placed, the auction will remain open and the bidder's eligibility will be preserved. However, an automatic waiver applied by the FCC Auction System in a round in which there are no new bids or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. **Applying a waiver is irreversible; once a bidder submits a proactive waiver, the bidder cannot unsubmit the waiver even if the round has not yet ended.**

iv. Auction Stopping Rules

70. For Auction 84, the Bureaus decided to employ a simultaneous stopping rule approach, which means all construction permits remain available for bidding until bidding stops simultaneously on every construction permit. More specifically, bidding will close on all construction permits after the first round in which no bidder submits any new bids or applies a proactive waiver.

71. The Bureaus also adopted alternative versions of the simultaneous stopping rule for Auction 84: (1) the auction would close for all construction permits after the first round in which no bidder applies a proactive waiver or places any new bids on any construction permit on which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (2) the auction would close for all construction permits after the first round in which no bidder applies a waiver or places any new bids on any construction permit that is not FCC-held. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit that does not already have a provisionally winning bid (an “FCC-held” construction permit) would not keep the auction open under this modified stopping rule; (3) the auction would close using a modified version of the simultaneous stopping rule that combines (a) and (b); (4) the auction would end after a specified number of additional rounds. If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close; and (5) the auction would remain open even if no bidder places any new bids or applies a waiver. In this event, the effect will be the same as if a bidder had applied a waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

72. The Bureaus will exercise these alternative versions only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these alternative versions the Bureaus are likely to attempt to change the pace of the auction. For example, the Bureaus may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureaus retained the discretion to exercise any of these options with or without prior announcement during the auction.

v. Auction Delay, Suspension, or Cancellation

73. The Bureaus, by public notice or by announcement during the auction, may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasized that they will exercise this authority solely at their discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

i. Round Structure

74. The initial schedule of bidding rounds will be announced in the public notice listing the qualified bidders. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted each day.

75. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may change the amount of time for the bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors.

ii. Reserve Price and Minimum Opening Bids

76. The Bureaus did not establish reserve prices, but adopted specific minimum opening bid amounts for the construction permits available in Auction 84. Each minimum opening bid amount is listed in Attachment A to the Auction 84 Procedures Public Notice.

iii. Bid Amounts

77. If a bidder has sufficient eligibility to place a bid on the particular construction permit, an eligible bidder will be able to place a bid in each round on a given construction permit in any of up to nine different pre-defined amounts. The FCC Auction System interface will list nine acceptable bid amounts for each construction permit. In the event of duplicate bid amounts due to rounding, the FCC Auction System will omit the duplicates and will list fewer acceptable bid amounts for the construction permit.

78. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a permit, the minimum acceptable bid percentage will be 10 percent higher. That is, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage of 10 percent. For example, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded.

79. The Bureaus will begin the auction with a bid increment percentage of 5 percent. Thus, the eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage of 5 percent. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage of 5 percent, rounded. For example, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.15, rounded; etc. The Bureaus will round the results of these calculations using the standard rounding procedures for auctions.

80. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureaus could set a \$10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is \$12,000 higher than the provisionally winning bid on a construction permit, the minimum acceptable bid amount would instead be capped at \$10,000 above the provisionally winning bid. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction.

iv. Provisionally Winning Bids

81. At the end of each bidding round, a “provisionally winning bid” will be determined based on the highest bid amount received for each construction permit. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Provisionally winning bids at the end of the auction become the winning bids. Bidders were reminded that provisionally winning bids count toward activity for purposes of the activity rule.

82. The Bureaus will use a random number generator to select a single provisionally winning bid in the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids). The FCC Auction System will assign a random number to each bid upon submission. The tied bid with the highest random number wins the tiebreaker, and becomes the provisionally winning bid. Bidders, regardless of whether they hold a provisionally winning bid, can submit higher bids in

subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid.

v. Bidding

83. An applicant is not obligated to bid on all permits for which it is eligible. An Auction 84 applicant also must have sufficient bidding eligibility to place a bid on that particular construction permit.

84. All bidding will take place remotely either through the FCC Auction System or by telephonic bidding. There will be no on-site bidding during Auction 84. Telephonic bid assistants are required to use a script when entering bids placed by telephone. The length of a call to place a telephonic bid may vary. Telephonic bidders were reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.

vi. Bid Removal and Bid Withdrawal

85. Each bidder will have the option of removing any bids placed in a round provided that such bids are removed before the close of that bidding round. By using the “remove bids” function in the FCC Auction System, a bidder may effectively “unsubmit” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder’s activity because a removed bid no longer counts toward bidding activity for the round. Once a round closes, a bidder may no longer remove a bid.

86. The Bureaus decided to prohibit Auction 84 bidders from withdrawing any bids after the round in which the bids were placed has closed. **Bidders are cautioned to select bid amounts carefully because no bid withdrawals will be allowed in Auction 84, even if a bid was mistakenly or erroneously made.**

vii. Auction Announcements and Round Results

87. The Commission will use auction announcements to report necessary information such as schedule changes.

88. Bids placed during a round will not be made public until the conclusion of that round. After a round closes, the Bureaus will compile reports of all bids placed, current provisionally winning bids, new minimum acceptable bid amounts for the following round, whether the construction permit is FCC-held, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access.

V. POST-AUCTION PROCEDURES

89. Shortly after bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing the deadlines for submitting down payments, final payments, and long-form applications.

A. Down Payments

90. Within ten business days after release of the auction closing public notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction 84 to twenty percent of the net amount of its winning bids (gross bids less any applicable new entrant bidding credits).

91. The Bureaus declined one comments request to waive, modify, or refrain from implementing the down payment and final payment procedures of 47 CFR 1.2107(b) and 1.2109(a) for the reasons described in the [Auction 84 Procedures Public Notice](#).

B. Final Payments

92. Each winning bidder will be required to submit the balance of the net amount of its winning bids within ten business days after the applicable deadline for submitting down payments.

C. Long-Form Application

93. The Commission's rules currently provide that within thirty days following the close of bidding and notification to the winning bidders, unless a longer period is specified by public notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 301, Application for Construction Permit for Commercial Broadcast Station) and required exhibits for each

construction permit won through Auction 84. Winning bidders claiming new entrant status must include an exhibit demonstrating their eligibility for the bidding credit. The Commission's rules also provide that a winning bidder in a commercial broadcast spectrum auction is required to submit an application filing fee with its post-auction long-form application.

D. Default and Disqualification

94. Any winning bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 84 bidder's winning bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. The Bureaus set the percentage of the applicable bid to be assessed as an additional default payment for this auction at twenty percent of the applicable bid.

95. If a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing authorizations held by the applicant.

FEDERAL COMMUNICATIONS COMMISSION.

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